

Troutman Pepper State Attorneys General Monitor – October 2021

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Troutman Pepper's State Attorneys General team combines legal acumen and government experience to develop comprehensive, thoughtful strategies for clients. Our lawyers handle individual and multistate AG investigations, proactive counseling and litigation, and manage ancillary regulatory issues. Our successful approach has been recognized by *Chambers USA*, which ranked our practice as a leader in the industry.

STATE ATTORNEYS GENERAL

FROM TOBACCO TO OPIOIDS, OIL, AND SOCIAL MEDIA — WHAT'S NEXT IN STATE AG COOPERATION ON PUBLIC HEALTH ISSUES?

By [Ketan Bhirud](#), [Rachel Buck](#), [Chris Carlson](#), and [Timothy McHugh](#)

Attorneys general have been quick to compare their ongoing opioid litigation to their efforts in the late 1990s, where they led the charge to address the public health concerns resulting from tobacco use. On the heels of a \$26 billion settlement offered by four companies alleged to have contributed to the opioid epidemic, it will be interesting to see what lessons states and companies have learned and where they go from here.

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DEVELOPMENTS IN CANNABIS REGULATION

IRS LAUNCHES CANNABIS INDUSTRY-FOCUSED COMPLIANCE INITIATIVE

By [Agustin Rodriguez](#) and [Christina Sava](#)

It is widely known that trafficking in controlled substances is a crime under federal law. Traffickers and would-be traffickers be warned, however, that if you do choose to make income from trafficking in Schedule I or II controlled substances (including cannabis, cocaine, or psychedelic mushrooms), that income is fully taxable by the U.S. government. And, if you have employees helping you produce and sell federal Schedule I or II controlled

substances (as many state-legal cannabis businesses do), you owe federal employment taxes as well.

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WILL THE FIFTH TIME BE THE CHARM FOR THE CANNABIS SAFE BANKING ACT?

By Ketan Bhirud and Matthew Fay

The House of Representatives has approved cannabis banking legislation for the fifth time. Will this be the year the Senate finally approves this legislation?

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CRYPTOCURRENCY REGULATION UPDATES

STATE REGULATORS BLOCK CELSIUS FROM OFFERING INTEREST-BEARING CRYPTOCURRENCY ACCOUNTS

By [Ghillaine Reid](#), [Casselle Smith](#), [Christopher Carlson](#), and Namrata Kang

State regulatory agencies in Alabama, Kentucky, New Jersey, and Texas have increased their efforts to challenge digital asset-related products by issuing cease-and-desist or “show cause” orders against New Jersey-based cryptocurrency company, Celsius Network LLC (Celsius). In September, Celsius — which provides a blockchain-based cryptocurrency lending and trading platform — became the most recent target of these states’ regulatory enforcement efforts against cryptocurrency products. Two months earlier, in July 2021, each of these states filed actions against BlockFi — another New Jersey-based cryptocurrency company that offers credit cards, loans, and interest-generating accounts. These state regulators variously allege that both BlockFi and Celsius have unlawfully offered unregistered securities in the form of high interest-bearing accounts used to fund their lending operations and proprietary trading.

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SEC FOCUSES ON CRYPTO ASSET TRADING PLATFORMS

By [Stephen Piepgrass](#) and [Mary Grace Metcalfe](#)

Over the summer of 2021, we have seen increased attention from the U.S. Securities and Exchange Commission (SEC) toward trading in cryptocurrency and other crypto assets. In particular, public comments by SEC Chair Gary Gensler have indicated that the SEC will soon take action against what he has described as the financial “Wild West.” On September 1, the form this action would take was clarified both by further comments from Gensler and by the filing of a complaint in the matter *SEC v. BitConnect*. As these comments and the complaint illustrate, the SEC’s concerns about the unregistered offering of securities and fraud on investors have led to a focus on crypto asset trading platforms and potential associated securities violations.

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NAAG

2021 NAAG PRESIDENTIAL SUMMIT

By Namrata Kang and [Daniel Waltz](#)

On September 30 and October 1, the National Association of Attorneys General (NAAG) held its *Presidential Summit*. Hosted by NAAG President and District of Columbia Attorney General Karl Racine, the summit occurred as part of his 2021 NAAG presidential initiative, “The People v. Hate: Standing Up for Humanity,” which focuses on raising awareness about bias and hate; preventing (and combatting) such incidents; and promoting social and racial justice. Consequently, the summit offered a forum for attorneys general from both sides of the aisle to come together and seek solutions for successfully combatting hate. One theme permeated all conversations: *Attorneys general must use their power to bring stakeholders to the table and engage communities to make progress together.*

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ANTITRUST ENFORCEMENT ACTIONS

STATE AGS: ARE MORE ANTITRUST ENFORCEMENT ACTIONS ON THE HORIZON?

By [Stephen Piepgrass](#) and [Bonnie Gill](#)

Several state attorneys general recently signaled their interest in pursuing broader and more effective enforcement antitrust actions by urging the federal government to pass legislation that would strengthen current federal antitrust laws and solidify the states’ authority to enforce them.

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DOJ UPDATES

DOJ EMBRACES AGENCY GUIDANCE DOCUMENTS AGAIN, BUT WHAT DOES IT MEAN FOR REGULATORY COMPLIANCE?

By Siran Faulders and [Timothy McHugh](#)

The Department of Justice has loosened restrictions on the use of agency guidance documents to establish violations of underlying legal requirements in enforcement actions and other litigation. According to a [memorandum](#) by Attorney General Garland, DOJ attorneys may now “rely on relevant guidance documents in any appropriate and lawful circumstances, including when a guidance document may be entitled to deference or otherwise carry persuasive weight with respect to the meaning of” statutory and regulatory requirements. Related changes to the *Justice Manual* that guides DOJ attorneys in their daily practice, namely JM 1-19.000 and 1-20.000, are forthcoming. Where exactly regulators and DOJ will draw the line in individual cases, between using guidance documents to effectively create legal requirements for regulated parties and merely informing their meaning, remains to be seen.

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INCREASE SCRUTINY FOR DATA BROKERS

APP ANNIE SETTLEMENT SIGNALS INCREASED SCRUTINY FOR DATA BROKERS BY SEC

By [Stephen Piepgrass](#) and [Daniel Waltz](#)

Data brokers beware, the Securities Exchange Commission (SEC) has signaled increased scrutiny into the data and privacy practices of technology-enabled companies in the financial services industry. On September 14, the SEC announced that it settled a securities fraud investigation into private technology company App Annie, Inc. and its former CEO and Chairman Bertrand Schmidt, in his private capacity, over alleged violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5. The SEC alleged that App Annie and its CEO used disaggregated company confidential data collected from a subset of its customers to increase the accuracy of models and estimates App Annie sold to trading firm customers, who paid a subscription fee for the information.

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NEW LEADERSHIP FOR FEDERAL AGENCIES

ROHIT CHOPRA CONFIRMED AS NEW CFPB DIRECTOR

By [Keith Barnett](#), Timothy Butler, [Carlin McCrory](#), and Matthew White

On September 30, the Senate confirmed Rohit Chopra as the new director of the Consumer Financial Protection Bureau (CFPB). Chopra's confirmation marks the beginning of his second stint with the CFPB — Chopra served as the CFPB assistant director between 2010 and June 2015, and had overlapping duties as the student loan ombudsman between October 2011 and June 2015. While serving as the student loan ombudsman, the CFPB sued for-profit colleges [Corinthian Colleges, Inc.](#) and [ITT Educational Services, Inc.](#) for alleged violations of the Consumer Financial Protection Act and Fair Debt Collections Practices Act based on their respective student lending practices. These lawsuits led both colleges to file for bankruptcy and liquidate. Also while acting as the student loan ombudsman, the CFPB initiated [enforcement actions](#) against [debt relief servicers](#) and their [payment processors](#) for alleged violations of Telemarketing Sales Rule that prohibit charging advanced fees. Some of these enforcement actions focused on debt relief in the student lending industry.

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BIDEN TO NOMINATE PRIVACY ADVOCATE ALVARO BEDOYA AS AN FTC COMMISSIONER

By Timothy Butler, [Keith Barnett](#), [Carlin McCrory](#), and Matthew White

On September 13, President Biden announced his intent to nominate privacy advocate Alvaro Bedoya to serve as a commissioner of the Federal Trade Commission (FTC). If confirmed, Bedoya will take the seat currently held by Rohit Chopra, who President Biden has nominated as the next director of the Consumer Financial Protection Bureau (CFPB), as we reported [here](#).

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Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

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